



SNOHOMISH HEALTH DISTRICT
RESOLUTION OF THE BOARD OF HEALTH

01-05

RESOLUTION NUMBER: 01-05

RESOLUTION SUBJECT: RIGHT OF APPEAL, DECONTAMINATION OF ILLEGAL
DRUG MANUFACTURING OR STORAGE SITES, HEALTH
OFFICER'S ORDER – UNFIT FOR USE; ESTABLISHMENT
OF PROCEDURE

WHEREAS the Board of Health of the Snohomish Health District is empowered pursuant to Revised Code of Washington (RCW) 70.05.060 (5) to "Enact such local rules and regulations as are necessary in order to preserve, promote, and improve the public health and provide for the enforcement thereof," and

WHEREAS the Board of Health of the Snohomish Health District is empowered pursuant to RCW 70.05.060 (6) to "Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services," and

WHEREAS the Health Officer of the Snohomish Health District is empowered pursuant to RCW 70.05.070 (5) to "Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction," and

WHEREAS properties that are the site of illegal drug manufacturing and the associated chemicals used, stored, and produced therein pose a threat to the safety and health of occupants of these contaminated properties and members of the public who may come in contact with these properties, and

WHEREAS RCW 64.44.020 and Washington Administrative Code (WAC) 246.205.530 authorizes the local health officer to inspect any property suspected of being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs, to declare the property unfit for use if contaminated, and to promulgate rules and standards for carrying out the provisions of Chapter 64.44 RCW, and

WHEREAS, RCW 64.44.030 and WAC 246.205.560 oblige the local health jurisdiction to provide an appeals mechanism in the form of a hearing held before the local health officer or the local health board upon request of a person notified of the Health Officer's Order declaring a property unfit for use, and

WHEREAS, RCW 64.44 and WAC 246.205 do not establish a substantive procedure by which appeals may be accomplished, and

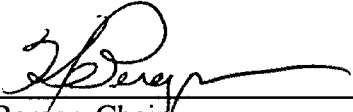
WHEREAS, RCW 64.44.070 empowers the Board of Health and the Health Officer with the authority to exercise such powers as may be necessary to carry out the chapter, and

WHEREAS, the Snohomish Health District Sanitary Code Chapter 1.9.1 is a well established appeals procedure that has shown itself to be durable, and

WHEREAS, Snohomish Health District Sanitary Code Chapter 1.9.1 with little substantive change will serve to meet the specific requirements of RCW 64.44 and WAC 246.205;


NOW, THEREFORE the Board of Health of the Snohomish Health District adopts the attached amended Snohomish Health District Sanitary Code Chapter 1.9.1 as a separate appeals procedure to be known as "Right of Appeal, Decontamination of Illegal Drug Manufacturing or Storage Sites, Health Officer's Order - Unfit for Use." Furthermore, fees set forth in this appeal procedure will be subject to periodic review and will be published in the Snohomish Health District fees schedule as approved by the Board of Health.

ADOPTED this 13th day of February, 2001.



Ken Berger, Chair
Board of Health

ATTEST:



M. Ward Hinds, MD, MPH
Health Officer

SNOHOMISH HEALTH DISTRICT SANITARY CODE

CHAPTER 11.3

RIGHT OF APPEAL, DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES, HEALTH OFFICER'S ORDER – UNFIT FOR USE

Pursuant to RCW 64.44 and WAC 246.205

The following Administrative Appeal Procedure is adopted.

- 11.3.1 Purpose:** The purpose of this Appeal Procedure is to establish a system which will aid in resolving conflicts arising from the administration of these regulations where not otherwise specified, and to ensure procedural due process and fairness in such administration.
- 11.3.2 What may be appealed:** Any local health officer's order with respect to the investigation of illegal drug manufacturing or storage sites made pursuant to these rules and regulations may be appealed.
- 11.3.3 Who may appeal:** Any bona fide party of interest feeling aggrieved by a decision or order of the Health District made pursuant to these rules and regulations pertaining to a facility in which the person has an interest may file an appeal.
- 11.3.4 Pre-appeal conference recommended:** Although not required for the purpose of initiating the Appeal Procedure, any bona fide party of interest feeling aggrieved by the decision of the Environmental Health Staff is encouraged to avail himself/herself of the opportunity to request an office conference with the sanitarian who made the decision under dispute. Such conference will permit a free exchange of viewpoints. The sanitarian will be expected to discuss and clarify the reason(s) for the decision and the regulations which are applicable. The individual dissatisfied with the decision may present his position and submit any information he/she feels has not been adequately considered in making the decision. An Environmental Health Supervisor may attend such conference. If the individual presents information not previously available or raises issues not previously addressed, the department may undertake an additional review of the matter following the conference.
- 11.3.5 Appeal procedure: General Information.**
- A. Hereinafter Health Officer shall mean the Health Officer or his/her authorized representative.
 - B. The Appeal Procedure shall consist of STEP ONE and STEP TWO.
 - C. STEP ONE shall be a Hearing conducted by the Health Officer.
 - D. STEP TWO shall be conducted by a Hearing Examiner.
 - E. The Appeal Procedure shall be initiated by the Appellant within ten (10) days of the date of the local health officer's order under dispute.
 - F. If the Health Officer feels that additional study or information is needed, any review period can be extended up to ninety (90) days.

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11.3.6 Appeal Procedure: STEP ONE.

- A. General: STEP ONE shall be a Hearing held before the Health Officer with the STEP ONE decision to be rendered by the Health Officer.
- B. Initiation of STEP ONE: The person feeling aggrieved (hereinafter referred to as Appellant) shall initiate the Appeal Procedure in writing on forms supplied and prescribed by the Health Officer. Appellant must provide the Health District with a copy of the written notice of the appeal either by hand delivery to the Environmental Health Division Office (Attention: Director of Environmental Health) or sent by certified mail within the time period set forth in Chapter 11.3.5 (E). The Appellant shall state the decision being appealed, the reason(s) for the appeal, and cite the regulations which the Appellant feels have not been followed or correctly interpreted by the Health District.
- C. STEP ONE review procedure: The Health Officer shall hold a Hearing not less than twenty (20) nor more than thirty (30) days after the date of the order. Such Hearing shall consist of a review of information relevant to the order under appeal including, but not limited to: (a) review of Health District records; (b) review of information submitted by the Appellant; (c) determination of what regulations/laws are applicable; (d) onsite inspection of the property in question if deemed appropriate.
- D. STEP ONE decision: The Health Officer shall inform the Appellant in writing of the decision from the STEP ONE Appeal Procedure. Such decision will indicate whether the original order is upheld or overruled.

11.3.7 Appeal Procedure: STEP TWO.

- A. General: STEP TWO shall be a Hearing conducted by a Hearing Examiner. STEP TWO shall follow STEP ONE of this Appeal Procedure if the Appellant is dissatisfied with the STEP ONE decision.
- B. Initiation of STEP TWO: The Appellant shall initiate the STEP TWO Appeal Procedure by submitting a fully completed request for appeal on forms supplied and prescribed by the Health Officer. Such request may be delivered to the Environmental Health Division Office (Attention: Director of Environmental Health) or sent by registered mail within thirty (30) days after the date the STEP ONE decision was rendered.
- C. Fee required: The request for the STEP TWO Appeal Procedure shall be accompanied by payment of a fee as established by the Board of Health in the fee schedule.
- D. Hearing Examiner:

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1. Selection: The Health Officer shall appoint a Hearing Examiner from one of the following: (a) any Hearing Examiner employed or retained by Snohomish County; (b) any Hearing Examiner employed or retained by any city or town within Snohomish County; (c) any attorney who has served as a judge pro tem; (d) any other individual who possesses qualifications to serve as Hearing Examiner and who has been approved by the Board of Health.
2. Qualifications: Examiners shall be appointed solely with regard to their qualifications for the duties required and will have such experience and training as to qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Hearing Examiners will not be current or past employees or consultants for Snohomish Health District.
3. Discontinuation of services: The service of any Examiner employed or retained by the Health District may be discontinued by action of the Board of Health.
4. Freedom from improper influence: No person, including Health District employees and/or members of the Board of Health, shall attempt to influence a Hearing Examiner in any matter pending before the Examiner, except at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of his/her duties in any way; PROVIDED, that this section shall not prohibit the Health District's attorneys from rendering legal service to the Examiner nor shall it prohibit Snohomish Health District staff from providing support services to the Examiner upon request.
5. Conflict of interest: No Examiner shall conduct or participate in any hearing, decision or recommendation in which the Examiner has a direct or indirect substantial financial or familial interest or concerning which the Examiner has had substantial pre-hearing contacts with proponents or opponents. Nor, on appeal from an Examiner decision, shall any member of the Board of Health who has such an interest or has had such contact participate in consideration thereof.
6. Hearing rules/procedures: The Board of Health shall adopt rules for the conduct of hearings and other procedural matters related to the duties of Hearing Examiners. In adopting such rules and procedures, the Board of Health shall take into consideration recommendations of persons serving as Hearing Examiners.
7. Powers and duties: Hearing Examiners shall receive and examine available information, conduct hearings, prepare records thereof, and enter decisions on STEP TWO appeal procedures. The Hearing Examiner shall have no authority to authorize a property Fit for Use, contrary to laws of the State of Washington, Revised Code of Washington (RCW) Chapter 64.44, Washington Administrative Code (WAC) Chapter 246.205 as now or here

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after, and/or applicable local rules and regulations of the Board of Health of the Snohomish Health District.

E. STEP TWO hearing:

1. Scheduling: The Health Officer shall, upon receiving a request from an Appellant for a STEP TWO hearing, appoint a Hearing Examiner and schedule such hearing within a reasonable time after receipt of their request for appeal. Appellant shall receive written notice of the time and place of the hearing not fewer than fourteen (14) working days prior to the date of the hearing.
2. Notice: Notice of the time and place of the public hearing will be sent by certified mail to the Appellant by the Health Officer.
3. Information for Hearing Examiner: Health District staff shall coordinate and assemble a factual statement with attached relevant documentation, along with the position statement of the Health District staff relative to said appeal, all to be delivered or mailed by certified mail to the Hearing Examiner and the Appellant not fewer than seven (7) working days prior to the scheduled hearing.
4. Information/Documentation/Admission by Appellant: Appellant shall assemble and submit any factual statement and copies of all documents or exhibits which Appellant intends to submit at said hearing, together with Appellant's position statement to the Hearing Examiner and to the Snohomish Health District not fewer than three (3) working days prior to the scheduled hearing. To the extent that the factual statement and/or documentation would be repetitious with the submission of the Health District staff, Appellant shall not re-submit such factual statements or documentation unless necessary for a sense of continuity to Appellant's position statement.
5. Conduct of public hearing: The Examiner shall conduct the public hearing following the general rules and procedures which have been adopted by the Board of Health as per Section 11.3.7 (D) (6) of this Chapter.
6. Examiner's decision: Within fifteen (15) working days of the conclusion of a hearing, unless a longer period is agreed to in writing or verbally on the record at the public hearing by the Appellant, the Examiner shall render a written decision which shall include at least the following:
 - (a) Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would conform to governing decontamination of illegal drug manufacturing or storage site regulations.

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- (b) A decision on the appeal which may be to grant, grant in part, return to the Appellant for modification, deny or grant with such conditions, modifications, restrictions as the Examiner finds necessary to comply with governing decontamination of illegal drug manufacturing or storage site regulations.
 - (c) A statement which indicates the procedure for appealing the Examiner's decision. The Examiner's decision shall be mailed to the Appellant, the Health Officer, and any other person who specifically requested notice of the decision by signing a register provided for such purpose at the hearing.
- F. Appeal from Examiner's decision: The decision of the Examiner shall be final and conclusive unless an application is made to a court of competent jurisdiction by writ of certiorari, writ of prohibition, or writ of mandamus within thirty (30) days of the Examiners decision.